

TEXAS BOARD OF PRIVATE INVESTIGATORS
AND
PRIVATE SECURITY AGENCIES

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Opinion Committee

Madeline Johnson, Esq.
Assistant Attorney General
Attorney General's Office
Chair, Opinion's Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear Madeline:

It was nice to see you in Austin last week. I wish that my schedule allowed more time for me to get to Austin than it has lately. In any event, the restaurant in Clarksville that you introduced me at lunch was delightful. Thanks again for the suggestion.

As we discussed, I am requesting that your office issue an opinion to the Texas Board of Private Investigators and Private Security Agencies. The situation described on the attached sheet raises issues regarding the constitutionality (and therefore the enforceability) of a certain Board Rule, which may exceed the authority vested in the Board by its governing statute.

Thank you in advance for your consideration of this important issue. Please call me if I can furnish you or your staff any further information.

Kindest personal regards.

Very truly yours,

Brenda H. Collier
Brenda H. Collier

BHC-2033:A/djz
cc: Clema D. Sanders, Executive Director

**TEXAS BOARD OF PRIVATE INVESTIGATORS
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Request for Attorney General's Opinion

The Private Investigators and Private Security Agencies Act, found at Article 4413(29bb) V.A.C.S. at §11B.(a) provides that the Board may discipline licensees who have committed an act or acts:

"(2) . . . resulting in conviction of a felony; [or]

(3) . . . that results in a conviction of a misdemeanor involving moral turpitude;"

The companion Rule enacted by the Board, provides at Section 11.423.1 (Sec. 11)(f) that: "No licensee, . . . shall be involved in the following: [emphasis supplied]

(2) Indictment on a felony involving a non-violent crime. [or]

(3) Filing of criminal charges on a felony involving a violent crime."

As you can see from a comparison between the language of the Act and the Board Rule, the Rule is more restrictive in its application than may be authorized under the Act. In practical effect, the Rule results in disciplinary proceedings against licensees for mere allegations of criminal behavior, which behavior may not, in the end, result in a criminal conviction. The Board is concerned with guarding against criminal conduct by regulated individuals, however, the enforceability of the Rule is questionable when it is more restrictive than that of the governing Act. Compounding the dilemma of the Board in these decisions is the fact that many of the licensees at issue are commissioned by the Board to carry firearms.

While no "official" deadline on the cases currently on file with the Board is pending, due to the public safety issues inherent in the allegedly criminal behavior of licensees, I would ask that this question be addressed as soon as possible. Many complaints and recommendations for action under the Rule in question and pending before the Board. These were tabled at the May Board meeting pending receipt of an Attorney General's opinion on the enforceability of the Board Rule in question. Those matters will appear again on the September 1991 Board agenda. However, in the interim, no similar complaints will be processed unless they have resulted in a conviction of a licensee for a crime specified in the statute.